

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

DEBBIE BAIZE,

Plaintiff,

v.

AUSTIN BURTON LLOYD,

Defendant.

Case No. 14-cv-02573-BAS(JMA)

**ORDER:**

- (1) **DISMISSING ACTION FOR FAILURE TO STATE A CLAIM WITHOUT LEAVE TO AMEND; AND**
- (2) **TERMINATING AS MOOT PLAINTIFF'S MOTION TO DIRECT U.S. MARSHALS SERVICE (ECF NO. 11)**

Plaintiff Debbie Baize ("Plaintiff"), proceeding *pro se* and *in forma pauperis* ("IFP"), commenced this action on October 29, 2014. (*See* ECF No. 1.) On November 13, 2014, the Court granted Plaintiff's motion for leave to proceed IFP and dismissed Plaintiff's initial complaint without prejudice and with leave to amend. (ECF No. 4.) Plaintiff filed a First Amended Complaint on November 21, 2014, followed by a Second Amended Complaint ("SAC") on December 1, 2014. (*See* ECF Nos. 6, 8.) On May 7, 2015, the Court dismissed this action in its entirety for failure to state a claim, giving Plaintiff leave to file a Third Amended Complaint no later than May 29, 2015. (ECF No. 12.) Plaintiff filed a Third Amended Complaint on May 14, 2015, which was supplemented on May 15, 2015 (collectively referred to as

1 the “TAC”). (*See* ECF Nos. 14, 16.) On May 19, 2015, Plaintiff also filed a motion  
 2 to direct service by the United States Marshals. (ECF No. 18.)

3 For the following reasons, the Court (1) **DISMISSES** this action in its entirety  
 4 **WITHOUT LEAVE TO AMEND** and (2) **TERMINATES AS MOOT** Plaintiff’s  
 5 motion to direct service by the U.S. Marshals.

## 6 **I. STANDARD OF REVIEW**

7 Federal courts have an obligation to dismiss a complaint brought by a person  
 8 proceeding IFP at any time if the court determines that the action “fails to state a  
 9 claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii). *See Calhoun*  
 10 *v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (holding that the provisions of 28 U.S.C.  
 11 § 1915(e)(2)(B) are not limited to prisoners).

12 All complaints must contain “a short and plain statement of the claim showing  
 13 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual  
 14 allegations are not required, but “[t]hreadbare recitals of the elements of a cause of  
 15 action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*,  
 16 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555  
 17 (2007)). “Determining whether a complaint states a plausible claim for relief [is] . . .  
 18 a context-specific task that requires the reviewing court to draw on its judicial  
 19 experience and common sense.” *Id.* at 679. The “mere possibility of misconduct”  
 20 falls short of meeting this plausibility standard. *Id.*; *see also Moss v. U.S. Secret*  
 21 *Service*, 572 F.3d 962, 969 (9th Cir. 2009).

22 “When there are well-pleaded factual allegations, a court should assume their  
 23 veracity and then determine whether they plausibly give rise to an entitlement to  
 24 relief.” *Iqbal*, 556 U.S. at 679; *see also Barren v. Harrington*, 152 F.3d 1193, 1194  
 25 (9th Cir. 1998) (noting that § 1915(e)(2)(B)(ii) “parallels the language of Federal  
 26 Rule of Civil Procedure 12(b)(6)”). However, while the court has an obligation  
 27 where the plaintiff “is *pro se*, particularly in civil rights cases, to construe the  
 28 pleadings liberally and to afford the [plaintiff] the benefit of any doubt,” *Hebbe v.*

1 *Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (quoting *Bretz v. Kelman*, 773 F.2d  
 2 1026, 1027 n.1 (9th Cir. 1985)), it “may not supply essential elements of the claim  
 3 that were not initially pled.” *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d  
 4 266, 268 (9th Cir. 1982). Moreover, “[v]ague and conclusory allegations of official  
 5 participation in civil rights violations are not sufficient.” *Ivey*, 673 F. 2d at 268.

6 “A district court should not dismiss a pro se complaint without leave to amend  
 7 unless it is absolutely clear that the deficiencies of the complaint could not be cured  
 8 by amendment.” *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015) (citation  
 9 and internal quotations omitted); *see also Lopez v. Smith*, 203 F.3d 1122, 1130 (9th  
 10 Cir. 2000) (en banc) (explaining that leave to amend should be given unless the  
 11 deficiencies in the complaint cannot be cured by amendment); *Ferdik v. Bonzelet*,  
 12 963 F.2d 1258, 1261 (9th Cir. 1992) (the district court’s discretion to deny leave to  
 13 amend is particularly broad where it has afforded plaintiff one or more opportunities  
 14 to amend).

## 15 **II. ANALYSIS**

16 In the TAC, Plaintiff alleges she was incarcerated for seven years by the State.  
 17 (ECF No. 16 at p. 2, line 12 & p. 3, line 9.) During that time, Plaintiff alleges her  
 18 social security “had unlawfully been stopped,” she was deprived of her family and  
 19 the ability to work to support herself and her dependents, and was deprived of the  
 20 ability to vote and register to vote. (*Id.* at pp. 2-4.) Plaintiff further alleges defendant  
 21 Austin Burton Lloyd (“Defendant”) willfully committed perjury by lying on the  
 22 stand. (*Id.* at p. 6, lines 14-22.) Plaintiff asserts several causes of action against  
 23 Defendant based on these facts, including: (1) a violation of 42 U.S.C. § 1983; (2) a  
 24 violation of the Federal Tort Claims Act; (3) false imprisonment; (4) perjury; (5) the  
 25 wrongful death of her husband Jared Baize; and (6) libel for the publications of  
 26 statements that wrongfully damaged Plaintiff’s personal reputation. (*See id.*) The  
 27 Court will address each of Plaintiff’s claims in turn.

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1           **A.     42 U.S.C. § 1983**

2           Plaintiff asserts a violation of 42 U.S.C. § 1983, alleging she was denied equal  
 3 protection of the law in that she was discriminated against because of her “race, color,  
 4 religion, sex, or national origin.” (ECF No. 16 at p. 2, lines 22-24.) As the Court  
 5 stated in its prior orders dismissing Plaintiff’s initial complaint and SAC, “[s]ection  
 6 1983 creates a private right of action against individuals who, acting *under color of*  
 7 *state law*, violate federal constitutional or statutory rights.” *Devereaux v. Abbey*, 263  
 8 F.3d 1070, 1074 (9th Cir. 2001) (emphasis added). Section 1983 “is not itself a  
 9 source of substantive rights, but merely provides a method for vindicating federal  
 10 rights elsewhere conferred.” *Graham v. Connor*, 490 U.S. 386, 393-94 (1989)  
 11 (internal quotation marks and citations omitted). “To establish § 1983 liability, a  
 12 plaintiff must show both (1) deprivation of a right secured by the Constitution and  
 13 laws of the United States, and (2) that the deprivation was committed by a person  
 14 acting under color of state law.” *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1138  
 15 (9th Cir. 2012) (quotations and citation omitted and emphasis added); *see also Flores*  
 16 *v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1134 (9th Cir. 2003) (“To establish  
 17 a § 1983 equal protection violation, the plaintiffs must show that the defendants,  
 18 acting under color of state law, discriminated against them as members of an  
 19 identifiable class and that the discrimination was intentional.”)

20           “The traditional definition of acting under color of state law requires that the  
 21 defendant in a § 1983 action have exercised power possessed by virtue of state law  
 22 and made possible only because the wrongdoer is clothed with the authority of state  
 23 law.” *West v. Atkins*, 487 U.S. 42, 49 (1988) (internal quotations and citation  
 24 omitted). State employment, for example, is generally sufficient to render the  
 25 defendant a state actor. *Id.* Private parties, on the other hand, are generally not acting  
 26 under color of state law. *Price v. State of Haw.*, 939 F. 2d 702, 707-08 (1991); *see*  
 27 *also Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49 (1999) (“[T]he under-color-  
 28 of-state-law element of § 1983 excludes from its reach merely private conduct, no

1 matter how discriminatory or wrongful.”)

2 As in her prior complaints, Plaintiff has not alleged or even indicated that  
3 Defendant was acting under color of state law. Accordingly, Plaintiff has failed to  
4 state a claim upon which relief may be granted under 42 U.S.C. § 1983.<sup>1</sup> As Plaintiff  
5 has already had two opportunities to amend her Section 1983 claim to allege  
6 Defendant was acting under color of state law, and has not been able to do so, the  
7 Court finds that the deficiencies in the TAC could not be cured by amendment. *See*  
8 *Rosati*, 791 F.3d at 1039; *Lopez*, 203 F.3d at 1130; *Ferdik*, 963 F.2d at 1261.  
9 Therefore, the Court dismisses this claim under 28 U.S.C. § 1915(e)(2)(B)(ii) without  
10 leave to amend.

#### 11 **B. Federal Tort Claims Act**

12 Under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346 and 2671-  
13 80, district courts have jurisdiction of civil actions on claims against the United States  
14 for money damages “for injury or loss of property . . . caused by the negligent or  
15 wrongful act or omission of any employee of the Government while acting within the  
16 scope of his office or employment.” 28 U.S.C. § 1346(b)(1); *see also* 28 U.S.C. §  
17 2671 (defining “employee of the government”). Here, Plaintiff has not alleged any  
18 actions by an employee of the government or alleged any claims against the United  
19 States. *See F.D.I.C. v. Meyer*, 510 U.S. 471, 477 (1994) (a claim is only actionable  
20 under 28 U.S.C. § 1346(b) if it alleges a claim against the United States for money  
21 damages or loss of property caused by an employee of the government); *see also*  
22 *Kennedy v. U.S. Postal Serv.*, 145 F. 3d 1077, 1078 (9th Cir. 1998) (“[T]he United  
23 States is the only proper party defendant in an FTCA action.”).

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25 <sup>1</sup> Plaintiff has similarly not alleged or indicated that Defendant was acting  
26 under color of federal law such that the Court could reasonably construe Plaintiff’s  
27 claim as one arising under *Bivens v. Six Unknown Named Agents of the Fed. Bureau*  
28 *of Narcotics*, 403 U.S. 388 (1971). *See Van Strum v. Lawn*, 940 F.2d 406, 409 (9th  
Cir. 1991) (“Actions under § 1983 and those under *Bivens* are identical save for the  
replacement of a state actor under § 1983 by a federal actor under *Bivens*.”).

As Plaintiff has already had two opportunities to allege actions by an employee of the government, and has not been able to do so, the Court finds that the deficiencies in the TAC could not be cured by amendment. *See Rosati*, 791 F.3d at 1039; *Lopez*, 203 F.3d at 1130; *Ferdik*, 963 F.2d at 1261. Therefore, the Court dismisses this claim under 28 U.S.C. § 1915(e)(2)(B)(ii) without leave to amend.

### C. State Law Claims

In addition to the federal claims discussed above, Plaintiff alleges state law claims for false imprisonment,<sup>2</sup> wrongful death, libel, and perjury. (ECF No. 16. at pp. 2, 6.) California law authorizes civil claims for false imprisonment, *see C.B. v. Sonora Sch. Dist.*, 691 F. Supp. 2d 1170, 1186 (E.D. Cal. 2010); *Asgari v. City of Los Angeles*, 15 Cal. 4th 744, 757 (1997) (citing Cal. Gov't Code §§ 820.4, 821.6); wrongful death, *see* Cal. Civ. Proc. Code § 377.60 (authorizing a decedent's spouse to bring a claim); *Ruiz v. Podolsky*, 50 Cal. 4th 838, 844 (2010); and libel, *see* Cal. Civ. Code § 45; *Scott v. Solano Cnty. Health & Social Svcs. Dept.*, 459 F. Supp. 2d 959, 973 (E.D. Cal. 2006); *Wong v. Tai Jing*, 189 Cal. App. 4th 1354, 1369 (2010). However, perjury cannot be the basis for a civil action. *See Carden v. Getzoff*, 190 Cal. App. 3d 907, 915 (1987) (citing *Taylor v. Bidwell*, 65 Cal. 489, 490 (1884)); *see also Silberg v. Anderson*, 50 Cal. 3d 205, 218-19 (1990) (noting that "other remedies exist aside from a derivative suit for compensation" to deter "injurious publications during litigation" including "criminal prosecution for perjury (Pen. Code § 118 et seq.)").<sup>3</sup>

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<sup>2</sup> Plaintiff alleges that as a consequence of her alleged false imprisonment she lost her social security benefits, the company of her family, her ability to work and support herself, and the ability to vote and register to vote. (ECF No. 16 at pp. 2-4.) As these allegations relate only to the damages and other relief sought by Plaintiff, the Court need not address them. The Court does not construe Plaintiff's loss of social security benefits to be a claim arising under 42 U.S.C. § 405(g). *See Ivey*, 673 F.2d at 268 (district courts "may not supply essential elements of the claim that were not initially pled").

<sup>3</sup> A perjury claim also cannot form the basis of a 42 U.S.C. § 1983 action.



The supplemental jurisdiction statute provides that this Court may decline to exercise supplemental jurisdiction over a claim if “the district court has dismissed all the claims over which it has original jurisdiction.” 28 U.S.C. § 1367(c)(3). Because Plaintiff has failed to state a federal claim, the Court declines to exercise supplemental jurisdiction over the state law claims. *See United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966) (“Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well”); *Herman Family Revocable Trust v. Teddy Bear*, 254 F.3d 802, 806 (9th Cir. 2001). Plaintiff’s state law claims are therefore dismissed without prejudice and left for resolution by the state court. *See id.* at 726-27.

### III. CONCLUSION & ORDER

For the foregoing reasons, the Court **DISMISSES** this action in its entirety **WITHOUT LEAVE TO AMEND**. *See* 28 U.S.C. § 1915(e)(2)(B)(ii); *Rosati*, 791 F.3d at 1039; *Lopez*, 203 F.3d at 1130; *Ferdik*, 963 F.2d at 1261. In light of the dismissal, the Court also **TERMINATES AS MOOT** Plaintiff’s motion to direct service by the U.S. Marshals (ECF No. 11).

**IT IS SO ORDERED.**

**DATED: August 26, 2015**

  
**Hon. Cynthia Bashant**  
**United States District Judge**

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Section 1983 does not authorize a damages claim against private witnesses for perjury committed during a state court criminal trial. *See Briscoe v. LaHue*, 460 U.S. 325, 334-36 (1983); *Franklin v. Terr*, 201 F.3d 1098, 1099-1101 (9th Cir. 2000).